IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6456 of 2007()

CRMP.3871/2007 of ADDL.C.J.M., ERNAKULAM
CRIME NO.534/07 OF ERNAKULAM TOWN SOUTH POLICE STATION

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PETITIONER/ACCUSED (PARTY IN CUSTODY)

B.SATHISH NAIR, S/O. DR. BALAKRISHNAN
NAIR, SIVAM HOUSE, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 6456 of 2007

Dated this the 23rd day of October, 2007

ORDER

Application for regular bail. The petitioner faces allegations under Secs.406 and 420 of the IPC. The crime has been registered on the basis of a complaint filed by the de facto complainant. The de facto complainant had entered into an agreement with the petitioner's establishment for construction of a building in a housing scheme sponsored by the petitioner's establishment. The agreement was entered into. The construction had started in the property. But though a long period has elapsed, construction has not been completed and the completed building has not been handed over to the de facto complainant. This, in short, is the allegation.

2. The learned counsel for the petitioner submits that the allegations, even if accepted in toto, cannot reveal anything more than the alleged breach of a civil liability. Going by the averments in the First Information Statement, it can be seen that an item of property measuring 2 cents has been conveyed

in the name of the complainant. It can further be seen that the construction had started and on being satisfied about the progress, further amounts were paid by the de facto complainant to the accused. Of course, the allegations reveal that the work has not been completed yet. The learned counsel for the petitioner, in these circumstances, submits that there is absolutely no justification in insisting on further continued detention of the petitioner who has remained in custody from 11/10/07.

3. The learned Public Prosecutor submits that the consideration of the allegations, in their totality, must reveal that the accused was actuated by dishonest intention when he entered into the transaction as also when he received amounts from the de facto complainant. His failure/refusal to complete the construction and hand over the building to the de facto complainant must, in these circumstances, be regarded as crucial. The Investigator may be given further time to complete the investigation. It is further pointed out that the petitioner has criminal antecedents. Several others are now coming forward with the allegations against the petitioner on coming to

know of the registration of this crime from the newspapers.

4. I have considered all the relevant inputs. Notwithstanding the opposition by the learned Public Prosecutor, I am satisfied that indefinite continued detention of the petitioner is unnecessary. In the facts and circumstances of this case, subject to appropriate conditions which shall ensure the interests of an efficient and expeditious investigation, I am satisfied that the petitioner can be granted regular bail now.

5. **In the result:**

(a) This application is allowed. The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall not be released from custody on the strength of this order prior to 30/10/07. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

(ii) The petitioner shall execute a bond for Rs.3,00,000/- (Rupees three lakhs only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioner shall make himself available for interrogation before the Investigating Officer on all Mondays and

Fridays between 10 a.m. and 12 noon for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so.

(iv) The petitioner shall not leave the State of Kerala and shall surrender his passport before the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge